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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: TERRORIST ATTACKS) 03-MDL-1570 (GBD) (SN)
ON SEPTEMBER 11, 2001)
)

— — —

Tuesday, July 13, 2021

— — —

THIS TRANSCRIPT CONTAINS
CONFIDENTIAL MATERIAL

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Remote video-recorded deposition of JONATHAN M.
WINER, held at the location of the witness,
commencing at 10:04 a.m., on the above date, before
Debra A. Dibble, Certified Court Reporter,
Registered Diplomate Reporter, Certified Realtime
Captioner, Certified Realtime Reporter and Notary
Public.

— — —

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1 What I did was I looked at, in light of
2 my own experience and knowledge, which included the
3 academic analytic work that I did for the U.S.
4 government, as well as my own tenure working for the
5 Senate and my two tenures at the State Department,
6 and the work that I've done on behalf of clients, I
7 looked at the materials provided to me by the
8 attorneys in this case, supplemented it with
9 additional research into the secondary literature of
10 some scholars, who I cite in my reliance material,
11 and that's how I came to my formulations.

12 When there was first-hand information
13 that I thought was particularly relevant, I looked
14 at it. And when I didn't have it, I asked for more
15 of it. A particular case of that is there were
16 representations about the extent of audits. I
17 wanted every audit that I could get my hands on.
18 The more, the better, because that's primary source
19 information that's very important to me.

20 Q. So let's make it clear on the record that
21 the audit you're referring to are not in your
22 affirmative report. Right?

23 A. Yes.

24 Q. Let's also --

25 A. Excuse me, the audits for WAMY were not

1 in my affirmative report. There were some IIRO
2 audits. I asked for them and I wanted them. I got
3 more audits from my rebuttal report and then
4 analyzed those.

5 Q. And let's make it clear that the reliance
6 materials that you have, the documents produced in
7 this -- the documents produced in this case were
8 given to you by plaintiffs' attorneys; correct?

9 A. Most of them were, or many of them were.
10 I supplemented as best I could with additional
11 research when I felt that additional research that I
12 was able to get in the limited amount of time that I
13 had between the time of my retention and the time
14 that my report was due, I would supplement.

15 Q. In your prior testimony, you stated those
16 are the documents that you relied on in rendering
17 your opinion in your affirmative report, correct?

18 A. Yes.

19 Q. The index. Okay. If an allegation
20 appears in a government document in your
21 methodology, do you accept the fact -- accept it as
22 a fact or do you do anything to attempt to
23 corroborate or dispel fact assertions?

24 MR. HAEFELE: Objection to form.

25 A. That's a very broad category, government

1 govern that process.

2 So it will be reviewed from all of those
3 perspectives. It may well also have been reviewed
4 from other perspectives if it was going to be used
5 in connection with an external legal process.

6 Q. Can an NGO designee challenge the
7 designation in this process?

8 A. No. No, to the best of my knowledge, no.

9 Q. Is there any due process procedure for
10 seeking in these matters?

11 MR. HAEFELE: Objection to form.

12 A. There's due process proceedings that
13 apply to designations undertaken by OFAC. In these
14 national security processes, in terms of who is
15 designated as a Tier 1, I don't believe there are
16 any. However, you're beginning to get into
17 Guantanamo territory, where you have this very
18 complex array of laws as to what is proper and what
19 is not proper when it intersects with the criminal
20 justice system and when it doesn't. And in that
21 highly technical area, I would have to do a great deal
22 of additional study before being able to provide
23 further guidance.

24 Q. (BY MR. MOHAMMEDI) But you did have that
25 in your report, right? You did explain Guantanamo,

1 GTMO, in your report?

2 A. Yes. But there -- what I'm saying is in
3 order to discuss civil law standards and the
4 opportunity -- where the opportunities might be for
5 it to intersect with U.S. civil laws, that would
6 require further study. That was not within the
7 scope of what I looked for.

8 Q. Do you know if Mammar Ameer worked for
9 WAMY? You mentioned his name.

10 A. I believe there are references to WAMY in
11 the documents that you briefly showed me the first
12 page of. I would prefer to go to that document in
13 order to provide a fuller answer.

14 Q. Just give me a second, please.

15 We can come back to this one, because we
16 need to look at the document. Let's move on to
17 another section.

18 A. Just to complete your answer, I think he
19 said he worked for WAMY for three years.

20 Q. That's what he said. That's what you
21 believe. And did you do any independent
22 investigation to find out if he worked for WAMY or
23 not?

24 A. I don't know how I could have possibly
25 done that in the period between my retention in

1 December 2019 and the period of producing the
2 report, and I did not.

3 Q. Are you familiar with the name Colonel
4 Wilkerson, from Secretary of State Colin Powell's
5 office?

6 A. Are you talking about Larry Wilkerson?

7 Q. I believe so, yes.

8 A. Yes. I know him.

9 Q. You know him, right?

10 A. Yes.

11 Q. Good. What do you think about him?

12 A. He's a complex person.

13 Q. That's nice way of saying it. When you
14 say complex, I mean, do you find him credible?

15 MR. HAEFELE: Objection to the form.

16 A. It depends on what he's talking about.
17 It depends on what the issue is. He has very strong
18 opinions on a variety of topics.

19 Q. (BY MR. MOHAMMEDI) Did you review his
20 declaration?

21 A. I don't remember at this moment
22 Colonel Wilkerson's declaration.

23 Q. I don't believe you did, because we don't
24 have it in your reliance material.

25 A. Yeah, I don't remember reviewing it.

1 Q. If you can just put exhibit up for our
2 purpose 16, perhaps.

3 (Winer Deposition Exhibit 911,
4 Declaration of Colonel Lawrence B.
5 Wilkerson (Ret.), was marked for
6 identification.)

7 Q. (BY MR. MOHAMMEDI) Have you seen this
8 document?

9 A. No.

10 Q. You have not seen this document. Do you
11 know this document is in the production?

12 A. No.

13 Q. I am going to direct you to paragraph 9.
14 That's A-E, which is page 4-5.

15 Do you want to take a minute to read it?

16 A. Yes, I do. I'd like to be able to read
17 the entire document before I --

18 Q. So in that case, we'll --

19 A. As I've not seen it before.

20 Q. Sure. We'll go off the record while
21 you're reviewing, Mr. Winer.

22 THE VIDEOGRAPHER: We'll go off the
23 record. The time is 3:52 p.m.

24 (Recess taken, 3:52 p.m. to
25 3:54 p.m. EDT)

1 THE VIDEOGRAPHER: We are back on the
2 record. The time is 3:54 p.m.

3 Q. (BY MR. MOHAMMEDI) The question I guess
4 you -- you just had the chance to review his
5 declaration. Do you -- do you agree or disagree
6 with his statement, paragraph 9, A to E?

7 And I just need to know if you agree with
8 his agreement. I don't need more information.

9 A. I can't answer that with an agree or
10 disagree response, sir.

11 Q. Why not?

12 A. Because he makes many statements here,
13 not one statement. And I have not, myself, gone
14 through Mr. Hamad's case to determine whether he was
15 wrongfully seized and detained, whether he was
16 innocent, guilty, partly guilty, partly innocent. I
17 can't assess any of those things. I can say that
18 Guantanamo is a serious failure of U.S. policy, and
19 that the way in which the United States approached
20 Guantanamo was not consistent with my values. I
21 believe that people should be -- matters should be
22 tried in court; and for Mr. Hamad, he was not able
23 to be tried. And that's a fundamental issue.

24 So having him able to be tried is
25 important. This is separate from the question that

1 you asked me earlier about the U.S. findings, which
2 are separate from and not addressed by Colonel
3 Wilkerson's statement, now that I've read it.

4 Q. Okay. Thank you. I appreciate your
5 answer on this.

6 We can bring this down.

7 Has WAMY ever been designated under OFAC
8 treasury of justice?

9 A. No, it has not.

10 Q. Was LBI, which is Lajnat al-Birr
11 al-Islamiah -- I spell it for you -- LBI was ever
12 designated?

13 A. I don't believe it was, no, sir.

14 Q. Previous -- I guess you -- you made --
15 sorry, strike that.

16 I will enter into exhibit -- it's our
17 Exhibit 17. It is a link to a video testimony of
18 the Undersecretary of Department of Treasury to the
19 9/11 Commission, Richard Newcomb.

20 (Winer Deposition Exhibit 912,
21 Terrorism Financing Hearing 2003
22 video clip, was marked for
23 identification.)

24 TRIAL TECHNICIAN: This is a
25 five-minute video.

1 MR. MOHAMMEDI: I'd like Mr. Winer to
2 watch it all.

3 Q. (BY MR. MOHAMMEDI) So it's -- it is a
4 video -- it's before -- let me see here.

5 Testimony of undersecretary before the --
6 if you go before the -- before the -- let me see.
7 Hold one second before I just --

8 MR. MOHAMMEDI: Can you hold on a
9 second? Can we go off record just while I'm
10 looking for a second, please?

11 THE VIDEOGRAPHER: Going off the
12 record. 3:59 p.m.

13 (Recess taken, 3:59 p.m. to
14 4:01 p.m. EDT)

15 THE VIDEOGRAPHER: We're back on the
16 record. The time is 4:01 p.m.

17 Q. (BY MR. MOHAMMEDI) The exhibit is
18 July 31, 2003. Testimony before the Senate
19 Governmental Affairs Committee on Terrorism Finance
20 Commission.

21 Do you know Richard Newcomb?

22 A. Yes.

23 MR. LEWIS: So I would like to just
24 go to the exhibit where Senator Specter was
25 asking the questions. If you could just play

1 that for us.

2 [Exhibit 912 - video played]

3 SEN. ARLEN SPECTER: We will now
4 proceed with questioning, five-minute rounds,
5 and the chairwoman has deferred to me for the
6 first round.

7 Mr. Newcomb, in interviews by staff
8 preparatory to your coming here, you advised
9 that a good many of your recommendations for
10 sanctions are rejected. Would you amplify
11 what has happened on that?

12 RICHARD NEWCOMB: Yes, Senator. In
13 identifying key nodes, our responsibility is
14 to identify how these terrorist organizations
15 fit their activities together. Who are --

16 SEN. ARLEN SPECTER: After you've
17 identified them and made the recommendation --
18 I only have five minutes, so I want to focus
19 very sharply on the rejections on the
20 recommendations which involve Saudi sources.
21 Precisely what has happened on that?

22 RICHARD NEWCOMB: Well, the
23 designation, as we indicated in our
24 discussions, is not the only possible action.
25 There's also law enforcement, intelligence.

1 SEN. ARLEN SPECTER: Well, let's
2 focus on economic sanctions, which is my
3 question, before we go into other possible
4 actions. I want to know about the
5 recommendations on economic sanctions as to
6 Saudis, which have been turned down.

7 RICHARD NEWCOMB: Senator Specter,
8 we've made numerous recommendations including
9 relating to Saudi Arabia and other terrorist
10 support organizations and groups. This goes
11 through a policy coordinating PCC process
12 where all of the equities of the government
13 come to the table.

14 SEN. ARLEN SPECTER: Well, my
15 question -- my question -- my question focuses
16 on recommendations which you have made for
17 sanctions as to Saudi organizations which have
18 been rejected.

19 RICHARD NEWCOMB: Well, first let me
20 say, it's not -- it's the policy not to
21 comment on internal policy deliberations
22 within the government. I can tell you, these
23 issues have been discussed with all of the key
24 players at the table. And when there's
25 another possible action that can be taken,

1 we've achieved our goal by teeing issues up.

2 There are --

3 SEN. ARLEN SPECTER: I'm not asking
4 you about internal deliberations, I'm asking
5 you -- and let me be -- let me be specific
6 with some organizations which have been
7 discussed with you by staff prior to your
8 coming here. Were there recommendations as to
9 the National Commercial Bank of Saudi Arabia
10 for economic sanctions which were rejected?

11 RICHARD NEWCOMB: No,
12 Senator Specter, there was not.

13 SEN. ARLEN SPECTER: Were there
14 recommendations for sanctions against the
15 World Assembly of Muslim Youth?

16 RICHARD NEWCOMB: There, as in
17 others, these are issues that we looked at and
18 examined very carefully. There was no
19 recommendation out of our office on either of
20 those.

21 SEN. ARLEN SPECTER: Well, what
22 conclusions did you come to on the World
23 Assembly of Muslim Youth?

24 RICHARD NEWCOMB: That, along with
25 the whole variety of charitable organizations

1 operating head offices in Saudi or
2 organizations that we're looking at, as well
3 as the whole range of several hundred or so
4 possible organizations that may be funding
5 terrorist activities, rising to the level of a
6 recommendation is a complicated policy
7 practice --

8 SEN. ARLEN SPECTER: Well, I'm not
9 concerned about several hundred others. I'd
10 like to know what about the World Assembly of
11 Muslim Youth. Were they funding terrorist
12 organizations subject to economic sanctions
13 without any action being taken?

14 RICHARD NEWCOMB: I can't conclude
15 that in this hearing today. It is an
16 organization that we --

17 SEN. ARLEN SPECTER: You say you
18 can't conclude it --

19 RICHARD NEWCOMB: Cannot. Cannot.

20 SEN. ARLEN SPECTER: -- at this
21 hearing today?

22 RICHARD NEWCOMB: Well, we did not
23 conclude that in our deliberations, so I can't
24 say that that was a recommendation of our
25 office.

This transcript contains Confidential Material

1 SEN. ARLEN SPECTER: How about the
2 International Islamic Relief Organization,
3 were there recommendations for sanctions there
4 which were rejected by higher officials in the
5 Treasury Department?

6 RICHARD NEWCOMB: This is an issue
7 that we'd looked at. And again, your question
8 relates to policy deliberations within the
9 administration which I can't comment on. I
10 can tell you we did look at --

11 SEN. ARLEN SPECTER: I'm not
12 interested in your policy deliberations. What
13 I'm interested in is your conclusions. Were
14 there economic sanctions taken against the
15 International Islamic Relief Organization?

16 RICHARD NEWCOMB: To date -- there
17 have not been as of this date.

18 SEN. ARLEN SPECTER: Do you think
19 there should be?

20 RICHARD NEWCOMB: It's something that
21 we would look at very carefully along with the
22 others participating in the policy process.

23 SEN. ARLEN SPECTER: Well, when you
24 look at it very carefully, how long have you
25 been looking at it up until now?

1 RICHARD NEWCOMB: Certainly since
2 immediately in the aftermath of 9/11.

3 SEN. ARLEN SPECTER: Well, that's
4 almost two years. How long will it take you
5 to come to a conclusion?

6 RICHARD NEWCOMB: We can recommend
7 and we can designate, but there is a policy
8 process which takes into account all of the
9 variety of --

10 SEN. ARLEN SPECTER: I've got
11 16 seconds left. Had you recommended this to
12 any of the organizations I've mentioned to
13 you, some tough economic sanctions which were
14 turned down by higher officials implicitly
15 because they were Saudi organizations?

16 RICHARD NEWCOMB: I can't say it's
17 because they were Saudi organizations.

18 SEN. ARLEN SPECTER: Well, can you
19 say whether they were turned down?

20 RICHARD NEWCOMB: I can say there
21 have been some charities and other
22 organizations that we've considered, we've had
23 at the table, and that have been deferred for
24 other actions which I would deem as
25 appropriate.

1 SEN. ARLEN SPECTER: Well, my red
2 light went on in the middle of your last
3 answer, but I'll be back.

4 RICHARD NEWCOMB: Okay.

5 [Video concluded]

6 Q. (BY MR. MOHAMMEDI) Mr. Winer, from 2003
7 until today, which is 2021 -- and you answered this,
8 but I want to make sure that I will ask this
9 question based on this testimony: WAMY has never
10 been subject to economic sanctions or designation by
11 U.S. government; correct?

12 A. You dropped off at the end of the
13 sentence. What I heard is are you asking me whether
14 WAMY has ever been designated by OPP? Is that the
15 question?

16 Q. Correct, from 2003 until today, which is
17 2021.

18 A. It has not.

19 Q. Do you -- are you aware that WAMY
20 International, which is WAMY USA, exists in
21 Virginia?

22 A. Yeah, I believe so. I believe so. It's
23 not something I focused on, but I believe so.

24 Q. Let's have the Exhibit 18. Just want to
25 make sure for the record to put that into evidence.

1 (Winer Deposition Exhibit 913, WAMY
2 International, Inc. 2021 Annual
3 Report, was marked for
4 identification.)

5 MR. HAEFELE: What is Exhibit 18? Do
6 you mean --

7 MR. MOHAMMEDI: Yeah, it is WAMY
8 registration of 2021. And this is a
9 registration for WAMY International with the
10 Commonwealth of Virginia State Corporation
11 Commission.

12 MR. HAEFELE: Just so we're clear,
13 it's Exhibit 913.

14 MR. MOHAMMEDI: Exhibit 913, correct.

15 Q. (BY MR. MOHAMMEDI) You didn't consider
16 this in your material when you were rendering your
17 opinion, correct?

18 A. This document is dated January 23, 2021,
19 so I did not consider it in my report that was
20 written some months before.

21 Q. (BY MR. MOHAMMEDI) Mr. Winer, if I
22 represent to you that all the registration of WAMY
23 International from that time until 2020 was
24 submitted and were produced to plaintiff counsel,
25 would you agree with me?

1 MR. HAEFELE: Object to the form.

2 A. Would I agree with you on what, sir?

3 Q. (BY MR. MOHAMMEDI) We have produced the
4 documents, the registration documents, for every
5 year including -- every year up to 2020, I believe,
6 to you -- to the lawyers who hired you in this
7 production --

8 A. Yes.

9 Q. -- of this case production.

10 A. What's the question, please?

11 Q. The question -- so you said this was
12 2021, and you did not review. And the question, are
13 you aware that WAMY produced all registrations of
14 WAMY prior to 2021?

15 A. I was not aware of that production, but I
16 did understand WAMY was still out there, as I said
17 to you a minute ago.

18 Q. We can take that down.

19 MR. MOHAMMEDI: Can we take a
20 five-minutes break?

21 THE VIDEOGRAPHER: Going off the
22 record. 4:11 p.m.

23 (Recess taken, 4:10 p.m. to
24 4:18 p.m. EDT)

25 THE VIDEOGRAPHER: Back on record at

1 4:18 p.m.

2 Q. (BY MR. MOHAMMEDI) Mr. Winer, are you
3 aware of any person who attended madrassas, as you
4 mentioned from WAMY, WAMY madrassas, that became a
5 member of al-Qaeda?

6 A. I don't know who attended WAMY madrassas
7 and who did not.

8 Q. But you are not aware of anyone who was
9 at the madrassas that became a member of al-Qaeda?

10 A. I do not know what madrassas incubated
11 which fighters and which terrorists, period.

12 Q. Okay. So the question you are not aware
13 of anyone who attended madrassas, it doesn't matter
14 which type of madrassas, that became a member of
15 al-Qaeda.

16 A. I know that there are people who became
17 members of al-Qaeda who attended madrassas.

18 Q. What about WAMY?

19 A. I don't know which madrassas they
20 attended, whether they were related to WAMY or any
21 other organization that sponsored a madrassas.

22 Q. So as you sit here, you don't "know"
23 know; correct?

24 A. That's correct.

25 Q. Let's go to your report, Section 12,

1 which starts with page 104-110.

2 In your affirmative report, you refer to
3 Adel Batterjee as chairman of WAMY and global
4 chairman of WAMY. Do you remember that?

5 A. Yes.

6 Q. At that time you did not review WAMY
7 documents; correct?

8 A. I had reviewed some WAMY documents. I
9 relied on his identification of himself as that role
10 to the New York Times. That's not correct. I
11 corrected it in my rebuttal report.

12 Q. And you corrected that in your rebuttal
13 report; correct?

14 A. I did.

15 Q. Okay. But then you mentioned in your
16 rebuttal which is 2.38.6, at page 31, if you look at
17 it, and you refer to Batterjee was the chairman of
18 LBI; correct?

19 A. Yes.

20 Q. Where do you get that information from?

21 A. His function and the role in the field at
22 LBI. I don't have a footnote there. I don't
23 recollect the source but I believe it to be
24 accurate.

25 Q. I'm sorry, what do you say? You believe

1 the information is accurate?

2 A. I believe that he ran LBI. And in the
3 deposition of Noor Wali, Noor Wali talks about
4 Batterjee's central role.

5 Q. I do understand that. But you paint him
6 as a chairman of LBI; correct?

7 A. He ran it. Did he have the formal title
8 of chairman? I don't recollect.

9 Q. And it is fair to say you have not
10 reviewed documents produced in this case as to the
11 role of Batterjee with LBI; correct?

12 A. I don't think it's fair to say that. I
13 reviewed Noor Wali's deposition, which goes into it
14 in some depth about Batterjee's role. I reviewed
15 other documents in which Batterjee was characterized
16 as the founder of LBI. This includes the U.S.
17 government, and I think the UN's findings about
18 Batterjee, which in turn are consistent with the
19 proffer in the Arnaout case, put together by Patrick
20 Fitzgerald. All of this is made complicated by the
21 fact that the word al-Barr in Arabic, A-L dash
22 B-A-R-R, I understand to be the word that's
23 translated often as "benevolence." And that becomes
24 part of the elements of confusion, as well as what
25 Batterjee was doing within LBI and what Batterjee

1 was doing within what's known as BIF.

2 Q. Mr. Winer, really -- I think -- that is
3 not my question, and you -- you know, we're spending
4 a lot of time, and I don't have it. I am
5 specifically asking you if you get this
6 information -- where did you get this information
7 that Batterjee was the chairman of LBI? That's the
8 only question I'm asking.

9 A. I don't recollect.

10 Q. Okay. And then you go on in the
11 Section 12.12.15, at page 109, and quoting the New
12 York Times again, stated that: If a BIF worker
13 decides he wanted to join fighting forces, we would
14 not stop him. But he can no longer officially
15 represent our organization; correct?

16 A. Yes.

17 Q. But that's his quote, right? That's the
18 New York Times quote, right?

19 A. Yes.

20 Q. You comment on 12.12.16, page 110, you
21 actually made it -- you changed that quote to say:
22 Instead, his clear message is that nothing would
23 change other than that a person engaged in jihad
24 could no longer "officially" be involved in our
25 organization. And you said WAMY there?

1 A. Yes.

2 Q. You didn't say "our organization"; right?

3 MR. HAEFELE: Form.

4 A. I understood and believe that Batterjee
5 was carrying out work on behalf of WAMY and LBI at
6 the same time. And the record shows --

7 Q. (BY MR. MOHAMMEDI) Which record are you
8 referring to?

9 A. The record from the financial documents
10 that I looked at from the Batterjee deposition --
11 pardon me, I misspoke. From the Noor Wali
12 deposition, for starters. That WAMY was funding the
13 activities of LBI in Pakistan-Afghanistan, at the
14 time. So I believed he was acting in both
15 capacities at that time in that location.

16 Q. That's your belief; correct?

17 A. Yes.

18 Q. If I represent to you that the
19 document -- the documentary evidence in this case
20 shows that LBI/BIF as separate organization, do you
21 still rely on the government statement that does not
22 provide evidence on this matter?

23 MR. HAEFELE: Objection to form and
24 foundation. Misstates the evidence.

25 Q. (BY MR. MOHAMMEDI) Do you believe that a

1 government employee is always right?

2 MR. HAEFELE: Objection to form.

3 A. I'm sorry, I couldn't understand what you
4 just said. Please repeat it.

5 Q. (BY MR. MOHAMMEDI) Do you believe a
6 government employee is always right?

7 A. No.

8 Q. And if the documentary evidence in a case
9 that proves the opposite of that government
10 employee, will you consider that?

11 MR. HAEFELE: Objection, form,
12 foundation, misstates the evidence.

13 A. I try to consider everything. In the
14 case of Arnaout and LBI and BIF, and WAMY, you have
15 a very complicated environment in which Arnaout and
16 Batterjee are meeting with key people who are part
17 of al-Qaeda early on, in which WAMY provides early
18 support to LBI, which is simultaneously Saudi and
19 Pakistani. LBI at some -- at some point Batterjee
20 creates another benevolence, similarly named. So a
21 person who previously met with Bin Laden becomes
22 head of the U.S. organization.

23 So sorting all of that out in a way that
24 is transparent, clean, and linear is not possible
25 because it's all concatenation. It has to be looked

1 at together. And that's how I understand the
2 situation.

3 Q. (BY MR. MOHAMMEDI) Isn't it a fact that
4 because you are making a statement that BIF and LBI
5 are intertwined and you mentioned that many times,
6 interchangeable, based on a proffer; right?

7 That's --

8 A. No.

9 Q. Okay. So let me ask you a question.
10 Another question.

11 It's not based on a proffer you say;
12 correct?

13 A. It's based on all the information
14 available to me.

15 Q. Okay. Okay. So let's go through some of
16 the documents to show you.

17 If you put in Exhibit 26, which is --
18 just remind me where we are.

19 TRIAL TECHNICIAN: 914, I have.
20 (Winer Deposition Exhibit 914,
21 Minutes of the Seventh Meeting of the
22 Benevolence Committee's Supervisory
23 Council, was marked for
24 identification.)

25 Q. (BY MR. MOHAMMEDI) This is an Arabic

1 document, translated in English, which is -- which
2 is document that have been produced in this case.
3 Minutes of the Seventh Annual Meeting of LBI
4 Supervisory Council on July 8, 1993.

5 If you go to the -- I know you don't
6 speak Arabic, Mr. Winer, but there is an English
7 translation. Can you go down to the English
8 translation? Or go up. I'm not sure where. It's
9 either first.

10 Are we there?

11 A. Yes.

12 Q. No, not to you, Mr. Winer, I'm talking to
13 the tech.

14 TRIAL TECHNICIAN: Is it not showing
15 on your screen?

16 MR. MOHAMMEDI: It's not, no.

17 Oh, it's there.

18 Q. (BY MR. MOHAMMEDI) This meeting refers
19 to the council approval of Dr. Hassan Bahifz Allah
20 wanting to replace Adel Batterjee after being
21 dismissed for an extension of six months beginning
22 on August 1, 1993. Do you see that?

23 A. No.

24 Q. Okay. So can you go to the section --
25 that's it.

1 Okay. Are you ready? Let me know when
2 you're ready.

3 A. I've read the material that you've
4 provided me, in front of me in yellow.

5 Q. Yes, the yellow pages.

6 It is fair to say Batterjee's dismissal
7 was in February 1993 if it was an extension of six
8 months for the person who replaced him starting
9 August 1993; correct?

10 A. I don't see those dates here.

11 TRIAL TECHNICIAN: Mr. Mohammedi, if
12 you could just direct me to what section.

13 MR. MOHAMMEDI: Yeah, I'm going to.

14 Go to page 9.

15 This one here.

16 THE WITNESS: So is executive
17 director the title Batterjee had rather than
18 chair?

19 Q. (BY MR. MOHAMMEDI) Correct.

20 A. Then I'm corrected, it's executive
21 director rather than chair. I accept that
22 correction, if that's what the records show.

23 Q. And then also, that Mr. Batterjee was
24 dismissed, was gone in February 1993.

25 A. Sir, where does it say that, please?

1 Q. It says extending the one date of
2 Dr. Hassan Bahifz Allah, and that's No. 1 of the
3 second No. 1.

4 A. I see that.

5 Q. Okay. And the documents before talks --
6 I mean, the same document talks about his -- the
7 issue with the -- with the -- with Adel Batterjee,
8 but here the extension of this extended the mandate
9 of Hassan Bahifz Allah for an additional six months
10 that was following the dismissal of Mr. Batterjee.

11 A. Where does it say that --

12 Q. So we're going to show you -- if you
13 go -- if you go to page 7.

14 Make it a little bigger.

15 A. It says: The executive director briefly
16 spoke in his report of the latest updates regarding
17 the handover from the former director. I don't see
18 the word "dismissal." I see "handover." And then I
19 see a reference to tension and a promise was made to
20 quickly and directly intervene to ease such tension.

21 What is the date of the document, sir,
22 please?

23 Q. It's a meeting discussing the new
24 executive director that was an extension after six
25 months, which means Batterjee was not the executive

1 director starting February 1993; correct?

2 MR. HAEFELE: Objection, form.

3 A. It does -- it actually doesn't say that.
4 It refers to a handover from the former director.
5 And refers to an attempt to ease the tension, which
6 suggests there are still actions to be taken. So I
7 can't assess from this when he was dismissed.

8 Q. (BY MR. MOHAMMEDI) But you can assess
9 that he was not with LBI as of February 1993,
10 correct?

11 MR. HAEFELE: Objection, form.

12 A. No, I cannot.

13 Q. (BY MR. MOHAMMEDI) You cannot?

14 A. I can't tell what date he left, based on
15 this.

16 Q. If you --

17 A. If I may continue. It looks to me from
18 this document that at some point in this period, a
19 new executive director took over from the old
20 executive director. It doesn't say that the old
21 executive director was dismissed. It does say that
22 there was tension and action going -- needed -- that
23 needed to take place to ease the tension.

24 So the dates -- the basic idea that he
25 was leaving the position seems to me the most

1 plausible interpretation of this. The statement
2 that he's dismissed does not -- is not set forth in
3 this document.

4 Q. Okay. I think we -- you know, I guess we
5 will go through the documents.

6 If we can have Exhibits 23.

7 (Winer Deposition Exhibit 915,
8 2-23-1993 letter to Adel Batterjee,
9 was marked for identification.)

10 Q. (BY MR. MOHAMMEDI) Which is dated
11 February 23, 1993.

12 That is the English version, which is
13 FED-PEC0114419, the Arabic document.

14 And then there is a translation.

15 If you can just make that bigger.

16 Can you read it for -- I mean, you can
17 read it to yourself if you want to.

18 A. Yes, this is consistent with Mr. Noor
19 Wali's deposition.

20 Q. And you do not have any reason to dispute
21 this accurate -- the accuracy of this document,
22 right?

23 A. No, I do not. I believe this is likely
24 to be accurate. I have no reason not to think it
25 accurate.

1 Q. Okay. I'm also going to include to have
2 an exhibit, which is 25, ours. Where are we? Which
3 number are we at?

4 (Winer Deposition Exhibit 916,
5 5-11-1993 letter to Salman bin
6 Abdulaziz, was marked for
7 identification.)

8 Q. (BY MR. MOHAMMEDI) This is a letter from
9 Dr. Al-Juhani, who was the head of Muslim -- the
10 World Assembly of Muslim Youth.

11 A. Yes.

12 Q. Have you seen this document before? You
13 can show the English version of it.

14 A. Yes. Thank you.

15 Q. And it's dated May 11, 1993; correct?

16 A. Yes, that's the date of it, if you'll
17 give me a minute, please.

18 Q. Have you seen this document before?

19 A. I need to read it to remember whether
20 I've seen it before or not.

21 Q. Sure. Just the highlighted sections.

22 A. Yeah, I've not read this document before.

23 Q. Do you have any reason to question the --
24 this document?

25 A. No.

1 Q. It's a primary source; correct?

2 A. Yes.

3 Q. And it's dated May 11, 1993; correct?

4 A. Yes.

5 MR. MOHAMMEDI: Can we get

6 Exhibit 27?

7 (Winer Deposition Exhibit 917,

8 6-14-1996 Minutes of Islamic

9 Benevolence Committee dissolution and

10 merging with World Assembly of Muslim

11 Youth, was marked for

12 identification.)

13 Q. (BY MR. MOHAMMEDI) As of May 28, 1996,

14 LBI merged with WAMY; correct?

15 A. Yes. I am familiar with this.

16 Q. You are familiar with this one, right?

17 MR. HAEFELE: Omar, just so we're

18 keeping consistent with the markings here,

19 this is already Noor Wali Exhibit 267, I

20 think.

21 MR. MOHAMMEDI: Okay, yeah. That's

22 fine. Yes. Thank you, Robert.

23 A. I do not remember whether I saw this

24 document or not. I think I did, but I'm not

25 positive, but I'm certainly familiar with the action

1 and the date and the substance of it.

2 Q. (BY MR. MOHAMMEDI) And the exhibit -- so
3 let's get Exhibit 28. If we could go to the
4 select -- the highlighted sections, this is WAMY
5 committee meeting minutes, discussing the
6 dissolution of LBI. This is the highlight sections
7 in the recommendation.

8 Can you make that bigger for us, please?

9 And this is -- this is dated May 28,
10 1996.

11 Is it fair to say that this was more than
12 three years since Adel Batterjee left LBI?

13 A. Based on the documents you've provided
14 me, which I have no doubt -- reason to doubt are
15 authentic and the date you've just represented to
16 me, it's a matter of calendar, three years later.
17 But I don't see a date on this document.

18 Based on your representation, that would
19 be three years, yes.

20 Q. Have you reviewed the dissolution
21 documents?

22 A. The dissolution documents of the LBI?

23 Q. Correct, I'm sorry, the LBI, right.
24 Yeah. Sorry about that.

25 A. I don't remember what I reviewed in

1 relationship to its merger into WAMY.

2 Q. Okay.

3 A. I knew that that happened, and consistent
4 with the timing that you have provided me.

5 Q. Are you aware of all asset of LBI, what
6 happened to them after the dissolution?

7 A. No.

8 MR. MOHAMMEDI: Can we get

9 Exhibit 29?

10 (Winer Deposition Exhibit 918,
11 8-18-1997 letter to Your Eminence the
12 Secretary General of the World
13 Assembly of Islamic Youth, was marked
14 for identification.)

15 (Discussion off the record.)

16 MR. MOHAMMEDI: Can we go to the
17 English translation?

18 Sorry, I'm just having a hard time
19 seeing the whole document.

20 Q. (BY MR. MOHAMMEDI) The dates -- can you
21 repeat the dates for us, Mr. Winer, of this
22 document?

23 A. Sure. The English language dates are
24 August 18, 1997, is the date at the top. And then
25 it refers to some other documents in 1997 and 1996.

1 Q. And this letter is from the Kingdom of
2 Saudi Arabia, Ministry of Islamic Affairs, Da'wah
3 guidance to Eminence Secretary General of the World
4 Assembly of Islamic Youth; correct?

5 A. I can't see who it's to.

6 Q. Okay. So do you know who is the
7 secretary -- who was the secretary at that time of
8 where that --

9 A. I can see -- I can see that it's from the
10 Minister of Islamic Affairs, and it looked like it's
11 to the secretary general of WAMY.

12 Q. Correct. Yes.

13 A. So now that it's smaller, I can see the
14 two in the front, which I couldn't before.

15 Q. And it refers to dissolution and it does
16 reference to sending the money to the Kingdom to be
17 put there as in terms of escrow, and they return
18 that money to WAMY when the merger and dissolution
19 of LBI occurred; correct?

20 A. Yes, that's what it says.

21 MR. MOHAMMEDI: We can put this down
22 and just continue.

23 Q. (BY MR. MOHAMMEDI) If you go to
24 paragraph -- I guess Section 3 -- yeah,
25 paragraph 3.30.3 of your rebuttal report, which is

1 was marked for identification.)

2 Q. (BY MR. MOHAMMEDI) Sir, the government
3 claim BIF are now subject to terrorism enhancement
4 under the guidelines. But the Court, if you go
5 to -- let's see, what page do we have. This
6 highlight I'm trying to find out. 838.

7 If you go down when you see the
8 highlighted section.

9 So the application here, it says, if you
10 see that: Arnaout does not stand convicted of a
11 terrorism offense, and goes on. Do you want to read
12 that for us, Mr. Winer?

13 A. I read it.

14 Q. You read it? Do you agree with that?

15 MR. HAEFELE: Objection to form.

16 A. The terrorist charges were dropped as
17 part of the plea agreement. That's accurate.

18 Q. (BY MR. MOHAMMEDI) And is it because the
19 government could not meet its burden; correct?

20 MR. HAEFELE: Objection to the form.

21 A. My understanding of the case as laid out
22 in my report and my rebuttal report, is that the
23 judge's decision on the admissibility of statements
24 by co-conspirators impaired the government's case,
25 and thus the government was not going to be able to

1 put into the record what it wanted to be able to put
2 into the record, and therefore it agreed to the plea
3 agreement, as did the defendant.

4 Q. (BY MR. MOHAMMEDI) Can you go to page 6
5 of the document?

6 Can you read this to us?

7 A. Yes, I'm aware of this. I've read this
8 at some point.

9 Q. And do you agree with that statement?

10 A. I agree with the statement based on --

11 MR. HAEFELE: Objection to form --

12 A. -- the information --

13 I agree with the statement based on the
14 consequences of the decision that was made to
15 eliminate the particular evidence that the
16 government was going to be relying on.

17 Q. (BY MR. MOHAMMEDI) Do you believe in the
18 judge's decisions?

19 A. The judge's decisions are a legal fact.

20 Q. They are legal facts, right? And they
21 are better than proffer, aren't they? They are
22 something you should be relying on rather than the
23 proffer; correct?

24 A. Yes, but you have to distinguish between
25 a criminal case and a civil case, which are not the

1 same thing. And not every judicial ruling is a
2 ruling that's going to be correct. Judges, in fact,
3 get overruled from time to time. That's part of the
4 process. In this particular case, no one appealed.
5 Neither the defendant nor the government appealed.
6 The government complained afterwards and reaffirmed
7 its belief that the defendants had committed more
8 serious offenses, but that's neither here nor there.
9 The decision is a fact, and it's legally accurate.
10 This was the decision that was reached.

11 Q. And you said there were no more --

12 If you can just put Exhibit 38, which is
13 a Seventh Circuit decision, which is the document
14 affirming the district court ruling.

15 (Winer Deposition Exhibit 923, U.S.
16 v. Arnaout 431 F.3d 994 (2005), was
17 marked for identification.)

18 A. So was there appeal here?

19 Q. (BY MR. MOHAMMEDI) Look at the -- look
20 at the exhibit where it says --

21 A. The United States did in fact appeal. I
22 had forgotten. Thank you for correcting me.

23 Q. Thank you.

24 So you were not aware of this, correct?

25 A. I had forgotten --

1 Q. Of this decision, the Seventh Circuit
2 decision?

3 A. I was aware of it. I had forgotten. It
4 says that: The District Court did not commit clear
5 error in refusing to apply the --

6 Q. Let's go to Section 3A1.4.

7 And there are highlights, if you go down.
8 Can you go down, just for us to see?

9 TRIAL TECHNICIAN: What page is it
10 on?

11 MR. MOHAMMEDI: Let me see. It's
12 highlighted. So you will find it.

13 Page 8.

14 Q. (BY MR. MOHAMMEDI) And the Court found
15 that: The district court did not [sic] find that
16 the record did not establish by a preponderance of
17 the evidence that Arnaout attempted, participated
18 in, or conspired to commit any act of terrorism.
19 The district court also found that the government
20 had not established that the Bosnian and Chechen
21 recipients of BIF aid were engaged in a federal
22 crime of terrorism, or that Arnaout intended the
23 donated boots, uniforms, blankets, tents, x-ray
24 machine, ambulances, nylon or walkie-talkies to be
25 used to promote a federal crime of terrorism.